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In re Application of :
CHUNG :
Application No.: 10/568,299 : DECISION ON
PCT No.: PCT/KR2004/002044 :
Int. Filing Date: 13 August 2004 : PETITION
Priority Date: 14 August 2003 :
Attorney Docket No.: 035967-021 :
For: SKIN RESURFACING DEVICE :

This decision is in response to applicant's submission filed 16 July 2008 requesting a refund of the petition fee paid on 15 February 2008. The submission has properly been treated as a petition under 37 CFR 1.181.

BACKGROUND

On 13 August 2004, applicant filed international application PCT/KR2004/002044 which designated the U.S. and claimed a priority date of 14 August 2003. A copy of the international application was communicated to the United States Patent and Trademark Office (USPTO) from the International Bureau on 24 February 2005. The thirty-month period for paying the basic national fee in the United States expired at midnight on 14 February 2006.

On 14 February 2006, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied by, *inter alia*, the basic national fee.

On 05 February 2007, a NOTIFICATION OF MISSING REQUIREMENTS (Form PCT/DO/EO/905) was mailed indicating, *inter alia*, that a declaration of the inventor in compliance with 37 CFR 1.497(a)-(b) was required.

On 11 December 2007, a NOTIFICATION OF ABANDONMENT (Form PCT/DO/EO/909) was mailed indicating that the application was abandoned as to the United States of America for failure to respond to the NOTIFICATION OF MISSING REQUIREMENTS mailed 05 February 2007 within the time period set therein.

On 15 February 2008, applicant filed a petition under 37 CFR 1.137(b) and a declaration of the inventor.

On 17 March 2008, applicant's petition under 37 CFR 1.137(b) was granted.

On 27 May 2008, a NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C., 371 AND 37 CFR 1.495 (Form PCT/DO/EO/903) was mailed.

On 16 July 2008, applicant filed the instant petition which has been treated as a petition under 37 CFR 1.181.

DISCUSSION

The NOTIFICATION OF MISSING REQUIREMENTS mailed 05 February 2007 was returned to the USPTO as undeliverable on 14 February 2007.

If applicants can establish nonreceipt of the NOTIFICATION OF MISSING REQUIREMENTS, then the application was never abandoned. In such case, the holding of abandonment will be withdrawn pursuant to 37 CFR 1.181. See MPEP § 711.03(c), para. I.A. Here, the return of the NOTIFICATION OF MISSING REQUIREMENTS to the USPTO as undeliverable is sufficient proof that applicant did not receive the NOTIFICATION. Accordingly, the NOTIFICATION OF MISSING REQUIREMENTS MAILED 05 February 2007 is hereby VACATED. Thus, the NOTIFICATION OF ABANDONMENT mailed 11 December 2007 and the decision on petition mailed 17 March 2008 are also hereby VACATED. The petition fee of \$770 charged to Deposit Account 50-1698 will be credited to that account.

CONCLUSION

The petition under 37 CFR 1.181 is **GRANTED** for the reasons set forth above.

The NOTIFICATION OF MISSING REQUIREMENTS MAILED 05 February 2007 is VACATED.

The NOTIFICATION OF ABANDONMENT mailed 11 December 2007 and the decision on petition mailed 17 March 2008 are also VACATED.

This application is being forwarded to the National Stage Processing Branch of the Office of PCT Operations to continue national stage processing of the application.

/Daniel Stemmer/

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